No. 95-384

OCT 31 1995

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

DAN COODY,

Petitioner,

v.

THOMSON NEWSPAPER PUBLISHING, INC., and S. D. STOKES,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Arkansas

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BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the Supreme Court of Arkansas, applying independent appellate review as directed by *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964), and *Harte-Hanks Communications, Inc.* v. *Connaughton*, 491 U.S. 657 (1989), correctly conclude that the record of this case did not contain clear and convincing evidence of actual malice?

2. Should the actual-malice standard of *New York Times Co.* v. *Sullivan* be reconsidered?

PARTIES AND LIST PURSUANT TO RULE 29.1

The parties are as stated at page ii of the petition for certiorari. Respondent Thomson Newspaper Publishing, Inc., is a Delaware corporation whose correct name is Thomson Newspapers, Inc. It is wholly-owned through intermediate wholly-owned corporate entities by The Thomson Corporation, a publicly held Ontario corporation.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-364

DAN COODY,

Petitioner,

v.

THOMSON NEWSPAPER PUBLISHING, INC., and S. D. STOKES,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Arkansas

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BRIEF IN OPPOSITION

Respondents respectfully pray that the petition for a writ of certiorari to the Supreme Court of Arkansas be denied.

OPINIONS BELOW

The opinion of the Supreme Court of Arkansas is reported at 320 Ark. 455 and 896 S.W.2d 897, and is reproduced at P.C.A. 1.[1] Its order denying rehearing is at P.C.A. 13.

JURISDICTION

The judgment of the Supreme Court of Arkansas was entered May 8, 1995. P.C.A. 1. Rehearing was denied

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[1] Citations to "P.C.A." are to the appendix to the petition for certiorari. Citations to "R." are to the record filed in the Supreme Court of Arkansas.

June 12, 1995. P.C.A. 13. The jurisdiction of this Court was invoked under 28 US.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The First and Fourteenth Amendments to the Constitution of the United States are reproduced in part at Pet. Cert. 2.

STATEMENT

A. The Complaint.

Petitioner, a member of the Fayetteville, Arkansas, City Board, was one of five candidates for mayor in the November 1992 election. He finished third. Soon after the election he brought this action for libel in the Circuit Court of Washington County, Arkansas, against respondents, who were the publisher and owner of a local newspaper, the *Northwest Arkansas Times*. The complaint as amended alleged that as the result of an editorial and news story, petitioner had been "irreparably damaged in his bid for the office of mayor," and had suffered emotional harm and damage to reputation. R. 14. He sought compensatory damages of $1,000,000 and punitive damages of $10,000,000. R. 502.

The editorial, captioned "It's time for Coody's facade to come off" (R.17, p. 1a, *infra*), discussed petitioner's positions on a range of local issues, referred to public attacks on the newspaper by petitioner, and included the following comments:

> "In an effort to allow voters to voice their opinions about local candidates, early in the campaigning, we allowed 'Letters to the Editor' supporting local candidates until it became obvious there was some sort of 'set up' by at least one mayoral candidate. After we printed a letter from a Missouri man who said he talked to Dan Coody for a couple of hours several years ago and wanted to tell everybody what a great guy he was, I reassessed the decision and had my editor begin phasing out letters supporting individual city candidates.

"Shortly after he declared for mayor, I began hearing rumors about Coody. We did not give credence to these rumors. I wanted to keep the local campaigning as clean as possible.

"The gloves come off

"However, after certain events occurred during the past two weeks, it's time for the gloves to come off.

"In the past several weeks in programs on the public access television station, Coody has launched attacks against the Northwest Arkansas Times, including mentioning me as the publisher. He also has, I believe, attempted to mislead the public about who he is and what he stands for. In private, he has exhibited behavior which makes me doubt his ability to perform under stress—something a mayor certainly must do. . . .

"I believe Coody's attacks against me and this newspaper are being launched simply because he couldn't get his way here. The first week I met Coody, I let him know neither he nor anyone else could dictate what this newspaper prints.

"I had been at the Times for less than two weeks when Coody visited me and began telling me who I should and should not listen to in the community.

"At that time, I told him that's not the way I operate. That I wanted this newspaper to publish news articles which are fair and unbiased. . . .

"Coody seems fond of making accusations without much substance. . . .

"I think it's time for Coody to back down, period. I believe his rhetoric about loyalties for Fayetteville is a thin facade covering his real loyalty—to himself.

"Dave Stokes
Publisher"

Petitioner alleged that the editorial (1) falsely implied that he had conducted a letter-writing campaign, (2) falsely implied that he had a secret criminal past, (3) falsely accused him of telling the newspaper what to print, and (4) falsely implied that as a candidate he had lied to the public. He claimed that such statements were actionable defamation. R. 8-10; P.C.A. 7-8.

Petitioner also complained of a news story which appeared on the day of the election. (R. 52, p. 6a, *infra.*) It responded to a report in another newspaper that respondent Stokes had retained a private investigator to investigate petitioner's background. As reported in respondents' news article Stokes "said the investigation revealed Coody's early life was 'very admirable,' " but that respondent "had uncovered some major discrepancies between information contained in the [investigator's] report and that he subsequently received from former Beaumont residents who say they knew Coody in high school." R. 52. It added that the publisher said the other four mayoral candidates had not been investigated "because they had not been the subject of rumors with the 'severity' of those circulated about Coody." *Id.* Petitioner alleged that this story also was "defamatory and libelous." R. 14.

B. Motion for Summary Judgment.

Respondents moved for summary judgment, arguing that there was no genuine issue of material fact because petitioner had failed to produce material evidence to controvert (1) that the editorial was an expression of opinion "that Coody was not the sort of person that would properly serve Fayetteville as its mayor," (2) that "[t]here is not one thread of evidence that any of the information contained in the opinion piece was false," and (3) "[i]f, in fact, incorrect information is contained in the writing, it was the product of a good faith belief in the truth of the information." R. 469. It noted that "[A]ll the allegations of Coody concerning the two publications at issue

actually involve strictly the opinions of Stokes, and where there are facts offered in support of those opinions, these facts are either admitted by Coody and/or based upon Stokes['] face-to-face encounters with Coody or his observations of Coody's actions and conduct in the community." R. 474. However, the trial court denied summary judgment, which it characterized as an "extreme remedy." R. 674.

C. Trial and Verdict.

At trial petitioner acknowledged that rumors about his past had circulated for many weeks before the editorial—spread, he testified, by rival candidates. R. 1182. Petitioner also acknowledged that long before the editorial appeared, he had been publicly critical of the newspaper and its publisher. R. 1127, 1170, 1193. He testified that rumors about his past were being spread by "a lot of folks," R. 1182, from the beginning of the campaign, R. 1137, 1203, 1205, that "a lot of people knew about them," R. 1204, and that he had no evidence that any rumor had been started by respondents. R. 1174.[2]

Petitioner also testified that before either the editorial or the news story had appeared, another candidate had held a press conference that referred to the rumors about petitioner, and that these statements had been covered on a local television newscast. R. 1178-80.[3] Petitioner

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[2] Petitioner testified that the rumors "started in earnest about two months before the election, maybe three months," R. 1176, and that "the most prevalent one was that I was involved in an armed robbery of a drug store when I was younger and . . . that I spent three to five years in prison . . . and when I got out I had my records expunged and that's why there is no record of me ever being in prison." R. 1137-38. His wife testified without contradiction that the rumors began "[r]ight away" when the campaign started, R. 1073, and that they also included alleged credit problems and spousal abuse, and rumors that "his wealthy parents had his record expunged." R. 1073-74.

[3] "Q. . . . So you actually had to deal with rumors on Friday before the editorial came out Saturday, right?

"A [by petitioner]. Yes."

R. 1180.

acknowledged that at that time the candidate had called petitioner "a secretive candidate with an unknown past." R. 1181. The rival candidate had announced that petitioner "doesn't want to supply you with specifics about his background." R. 639. Petitioner had publicly responded that rival candidates were spreading rumors that he had "an incredible criminal past." *Id.*

All this occurred before publication of either the editorial or the news story charged as libelous in the complaint. Petitioner also acknowledged that respondents never published the substance of any of the rumors. R. 1176, 1192.[4]

The jury awarded petitioner $15,000 compensatory damages and $260,000 punitive damages. R. 723-26. A motion for judgment notwithstanding the verdict or new trial was denied. R. 790.

D. Appellate Review.

The Supreme Court of Arkansas unanimously reversed. It first put aside, without deciding, the question whether the two articles "stated or implied facts which were defamatory and false" under Arkansas law. P.C.A. 8. Reversal was called for, it held, because even assuming such statements were defamatory and false, the record

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[4] "Q. The newspaper never printed a single one of these rumors, did they?

"A [by petitioner]. No, they did not. Could I see the 'Probe' article again, please?

"Q. Sure.

"A. No, they didn't print the rumors, no.

"Q. No newspaper ever printed any of the substance of the rumors, did they?

"A. No, they printed—All it says about rumors is that the other candidates hadn't been the subject of rumors with the severity circulated about Coody. That is the only reference to rumors.

"Q. You would probably agree to that one, wouldn't you?

"A. Yes, I would."

R. 1176.

lacked "clear and convincing evidence that the statements were made with actual malice." *Id.* It cited *Harte-Hanks Communications, Inc.* v. *Connaughton*, 491 U.S. 657 (1989), and quoted *St. Amant* v. *Thompson*, 390 U.S. 727 (1968), that

> "These cases are clear that reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication."

P.C.A. 8, quoting 390 U.S. at 731.

The court then reviewed the record and concluded that petitioner had failed to present clear and convincing evidence that respondents had entertained serious doubts as to the truth of any factual statements made.[5] In particular:

1. There was no evidence that respondents had entertained any doubt that there had been a letter-writing campaign. P.C.A. 9. Petitioner testified that letters indeed were written on his behalf and that he had actually discussed with his political staff arranging for letters to be written, but that finally he had decided not to do so. R. 1191.

2. As to whether petitioner had told the publisher "who I should and should not listen to in the community," R. 17, petitioner acknowledged that he had indeed visited the publisher and had a conversation on that subject in which, as petitioner recalled it, "I told him that I hoped the newspaper would continue to have fair and good coverage, that the media is very important to democracy, which I have a deep feeling about that, and for fair and unbiased

[5] The court began by noting that "Stokes testified he believed his statements to be true, but this is of little consequence in making the actual malice determination." P.C.A. 9.

coverage is the only way we can assure an educated electorate that can make decisions that are the best decisions. It was something along that line. We talked for a while longer along the same lines." R. 1132.[6] Citing *Bose* v. *Consumers Union of the United States, Inc.*, 466 U.S. 485 (1984), the court held that differing subjective impressions of the conversation did not create clear and convincing evidence of actual malice, even assuming "Stokes' perception . . . [was] possibly mistaken." P.C.A. 9-10.

3. As to rumors about petitioner—which concededly the editorial did not describe, but which petitioner himself described in a full-page pre-election advertisement, P.C.A. 5—petitioner testified that there had indeed been rumors about his past circulating for months prior to the editorial. R. 1137, 1176, 1182, 1203, 1205. The Supreme Court noted that "the testimony clearly established that rumors of Coody's alleged criminal past were circulating prior to October of 1992." P.C.A. 10. It held that there was no clear and convincing proof that the publisher "entertained serious doubts as to the truth of his publication" that unstated rumors were circulating. P.C.A. 11. That conclusion was not affected, the court held, by whether at the time of the editorial the publisher had already had a conversation with a high-school acquaintance of petitioner (in which it was undisputed she had stated that petitioner as a young man had had a "questionable" reputation and she believed had been involved with the police, although these were only her "impressions"). P.C.A. 10-11. "Although there are discrepan-

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[6] In an advertisement petitioner purchased, responding to the editorial, he said:

> "When we visited I let you know that you should be fair and be aware that the powerful special interests in this town would try to control what the paper covers and prints. I asked you to give everyone a fair shake and not line up solidly behind those who hold the power in this town with a death grip."

R. 640.

cies regarding when Stokes contacted Ms. Flynn, there is no proof that Stokes 'entertained serious doubts as to the truth of his publication.'" P.C.A. 11.

4. The Supreme Court also held that there was no clear and convincing evidence of actual malice in publishing the subsequent news story. The fact that a private investigator had been retained had already been reported by another newspaper—a story for which petitioner admitted he himself had been the source. R. 1196. Nor, the court held, could actual malice be established by the subsequent article which offered the opinion that investigation had shown a "very admirable" early life but "had created more questions than it had answered." R. 52; P.C.A. 11-12.[7]

5. The court also held that evidence that the publisher did not think petitioner suitable to be mayor, or had made an inadequate investigation, would not satisfy the "burden of proving actual malice by clear and convincing evidence," citing *Harte-Hanks Communications, Inc.* v. *Connaughton, supra.* P.C.A. 12.

REASONS FOR DENYING THE WRIT

The Supreme Court of Arkansas correctly applied settled law. It followed the familiar "actual malice" standard of *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964), and *Harte-Hanks Communications, Inc.* v. *Connaughton*, and in reviewing the issue of actual malice applied the law correctly to undisputed facts of record.

Contrary to petitioner's contention, Pet. Cert. 12-13, the Supreme Court did not even come close to disturbing any findings of credibility. On the contrary, it gave petitioner the benefit of every doubt as to underlying findings

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[7] Petitioner admitted at trial that he had publicly made false statements during the campaign; he explained that "I am not perfect." R. 1177-78. He also testified that during the campaign he had called at least one other candidate a liar. R. 1190.

that were even implicit, and simply held that as a matter of law under the *Harte-Hanks* standard, the record failed to provide clear and convincing proof of actual malice. Indeed, the Supreme Court's opinion demonstrates that there were no material facts disputed in this case, and that it could have been decided in respondents' favor on summary judgment.

Moreover, this would be a particularly inappropriate case for using this Court's limited resources to revisit the Arkansas Supreme Court's analysis of the record. This was a complaint by a public official and candidate for office about an unfriendly editorial during an election campaign that appeared in a newspaper he had criticized, and a news story that accurately reported both truth and opinion. Such publication is at the heart of the First Amendment's guarantee that discussions of candidates are to be "uninhibited, robust, and wide-open." *New York Times Co.* v. *Sullivan,* 376 U.S. 254, 270 (1964). The mild and cautious editorial and story here would scarcely register on that "wide-open" scale set by *New York Times.* "[T]he constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Monitor Patriot Co.* v. *Roy,* 401 U.S. 265, 272 (1971). Besides that, the statements published were also protected by the First Amendment as matters of opinion, or as accurate statements of fact, or as statements that even if inaccurate were not defamatory (*e.g.,* seeking to influence news coverage, or conducting a letterwriting campaign). The Supreme Court of Arkansas, applying this Court's well-established standard, reached a plainly correct result.

I. THERE IS NO CONFLICT WITH ANY OTHER APPELLATE DECISION.

Petitioner seeks to raise a supposed issue that this case simply does not present. *Harte-Hanks Communications, Inc.* v. *Connaughton, supra,* settled that credibility deter-

minations are not subject to independent appellate review under *New York Times Co.* v. *Sullivan*, but that actual malice is. That rule was adhered to here. The petition claims that there is confusion as to the extent to which appellate courts exercising independent review of actual malice may review underlying findings of historical fact, or those that arguably imply credibility determinations. No such review occurred here. Petitioner asks this Court to "revisit and clarify" *Harte-Hanks*. Pet. Cert. 8. There is no occasion here to do so.

The Supreme Court of Arkansas did not upset any jury findings of credibility or historical facts. On the contrary, it assumed that the jury had found underlying facts against respondents. See P.C.A. 9. Even giving petitioner the benefit of that assumption, it held that the record simply did not contain clear and convincing evidence of actual malice. P.C.A. 12. There is no reason for this Court to retrace the steps of that review.

The petition claims that the Supreme Court ignored an implicit jury finding that the publisher had not heard derogatory statements from petitioner's high-school acquaintance until after the editorial appeared. But what the Supreme Court held was that the timing of that conversation did not matter; the conversation and its contents were not mentioned at all in the editorial, so on either version of the timing, there simply was no clear and convincing evidence of actual malice. P.C.A. 11. That holding on these facts was neither incorrect nor remarkable.[8] Indeed, respondents acted cautiously and responsibly by investigating the facts and never publishing the substance of any of the widespread rumors—to the

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[8] "A 'reckless disregard' for the truth, however, requires more than a departure from reasonably prudent conduct. . . . [F]ailure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard." *Harte-Hanks Communications, Inc.* v. *Connaughton, supra*, 491 U.S. at 688.

substance of which petitioner himself referred in the advertisement he published, as well as in his public comments before either the editorial or the story complained of had appeared.[9] Petitioner himself admitted that rumors were prevalent long before the editorial. Similarly, even assuming that there had been no letter-writing campaign (and that to state that there had been could be defamatory), the Supreme Court pointed out that there still was no evidence that respondents had published with actual malice. P.C.A. 9. The ruling simply does not turn on appellate rejection of any subsidiary historical factfinding.[10]

II. THERE IS NO OCCASION FOR RECONSIDERING *NEW YORK TIMES CO.* v. *SULLIVAN.*

Petitioner proposes that

> "the actual malice standard should be reconsidered in light of the virtually insurmountable burden that it imposes on public plaintiffs in defamation cases."

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[9] In his public statement the day before the editorial, he denounced rumors about "an incredible criminal past." R. 639. Petitioner's advertisement stated in part, R. 640:

> "Those who fear progress and unity in our city have undertaken an unprecedented smear campaign against me. False and unsupportable allegations have circulated in our town, questioning my character, past activities, associations, and even my family life. A month ago I provided your newspaper with my complete background information, including credit history and criminal information reports from Texas and Arkansas."

[10] Petitioner errs in asserting that "actual malice" could be established if a defendant had a "financial motive in publishing" or "held a particular point of view" or "supported the plaintiff's opponent in an election" or "timed publication of the story to achieve maximum impact" or "did not conduct a complete investigation." Pet. Cert. 18-19. "[A] public figure plaintiff must prove more than an extreme departure from professional standards and . . . a newspaper's motive in publishing a story—whether to promote an opponent's candidacy or to increase its circulation—cannot provide a sufficient basis for finding actual malice." *Harte-Hanks Communications, Inc.* v. *Connaughton, supra,* 491 U.S. at 665.

Pet. Cert. at i. The petition complains that in applying *New York Times Co.* v. *Sullivan* as the Arkansas court did here, "[o]ther courts have also turned the actual malice rule into an insurmountable obstacle for public plaintiffs." Pet. Cert. at 19.

Even if the First Amendment rule long established by *New York Times Co.* v. *Sullivan* were to be reopened and reexamined—and there is no reason to do so—this would not be an appropriate case in which to reconsider that settled constitutional doctrine. The statements here were either true or opinion, were made in response to petitioner's own public attacks on the newspaper and its publisher during an election campaign, and the Supreme Court of Arkansas left undecided the obvious question whether what was published was even defamatory at all. P.C.A. 8.

CONCLUSION

For the reasons stated, certiorari should be denied.

Respectfully submitted,

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October 31, 1995

APPENDICES

APPENDIX A

(R. 17)

[October 31, 1992]

It's time for Coody's facade to come off

The months prior to this upcoming general election have been a balancing act for this newspaper.

We have endorsed state and national candidates, and we have taken a stand on local issues.

We have NOT, however, endorsed any of the candidates for city positions because we believe that to do so would interfere with our efforts to present balanced, unbiased reporting on a very controversial local city election.

In an effort to allow voters to voice their opinions about local candidates, early in the campaigning, we allowed "Letters to the Editor" supporting local candidates until it became obvious there was some sort of "set up" by at least one mayoral candidate. After we printed a letter from a Missouri man who said he talked to Dan Coody for a couple of hours several years ago and wanted to tell everybody what a great guy he was, I reassessed the decision and had my editor begin phasing out letters supporting individual city candidates.

Shortly after he declared for mayor, I began hearing rumors about Coody. We did not give credence to these rumors. I wanted to keep the local campaigning as clean as possible.

The gloves come off

However, after certain events have occurred during the past two weeks, it's time for the gloves to come off.

In the past several weeks in programs on the public access television station, Coody has launched attacks against the Northwest Arkansas Times, including men-

tioning me as the publisher. He also has, I believe, attempted to mislead the public about who he is and what he stands for. In private, he has exhibited behavior which makes me doubt his ability to perform under stress—something a mayor certainly must do.

A message sent

A tape recorded message left on another candidate's answering machine from Coody was brought to my attention this week. I feel the public should know the context of Coody's message to another mayoral candidate, Glenn Sowder.

(The abbreviations and dashes are ours because we will not print some of Coody's words in this newspaper.)

"Hey, Sowder, Coody here. How are you doing? Say, one of your biggest supporters over there, Gaylord, is telling a bunch of folks that I abused Deborah and that I have beat up women and things like that and it's p—— a lot of people off. If I were you, I would talk to that (SOB) because the reason we don't do business there is because he called Deborah a b——. So if you would just tell him to shut his g—d— mouth about stuff, I'd appreciate it, because not only is it a complete lie, he's making a lot of your supporters look at both of you and think, well, I know that is not true, so why is he saying that? So all right. We'll see you. Bye."

What's Coody nervous about?

Shouldn't he be glad if Sowder's supporters lose faith in him?

And, finally, if he has a problem with Gaylord, why didn't he go to him face-to-face instead of leaving such a message on Sowder's answering machine?

What's his rationale?

He couldn't get his way

I believe Coody's attacks against me and this newspaper are being launched simply because he couldn't get his way here. The first week I met Coody, I let him know neither he nor anyone else could dictate what this newspaper prints.

I had been at the Times for less than two weeks when Coody visited me and began teiling me who I should and should not listen to in the community.

At that time, I told him that's not the way I operate. That I wanted this newspaper to publish news articles which are fair and unbiased.

In the year I have been here, I've received numerous letters from readers who say they appreciate our having done just that, and appreciate the fact that there are people here who care about Fayetteville. On our opinion pages, we voice our opinion. In our news pages, we stick to the facts.

His slurs against the Northwest Arkansas Times are against every person who works here. Coody's attacks affect each and every employee here who is working to produce the kind of newspaper the community wants.

Attacking Fayetteville

His slurs against this newspaper are also slurs against Fayetteville. The Northwest Arkansas Times is Fayetteville's newspaper. The Times is committed to Fayetteville and committed to being the best newspaper possible. We've made a lot of positive changes in the past year in our quest to meet that goal. We will continue to make changes in response to the community in order to achieve that goal, but we will not be a mouthpiece for anyone on our news pages.

If Coody is against this newspaper which stands squarely for Fayetteville, where does he stand for Fayetteville?

Coody also has accused me of being in collusion with the chamber of commerce and with city government.

During my career as a newspaper manager, I have supported stories that expose wrong-doing by government and political figures.

In other cities, I've taken on a GOP chairman and a council member, both of whom were misusing their power. I've also taken on leaders of an industry who were attempting to pull strings for their own economic advantage. I will support such stories here when—and if—they are warranted.

As far as my ties with the local chamber of commerce, I have never made a secret my involvement with this chamber of commerce and have made it a practice to be involved with chambers of commerce in other cities where I have lived and worked. I believe a good, active chamber of commerce is vital to any city, and certainly, Fayetteville is no different.

Accusations come easy

Coody seems fond of making accusations without much substance.

During a forum this newspaper sponsored on public access television, Coody accused the Fayetteville Chamber of Commerce of taking excess amounts of money from the city.

During that forum, Coody said the chamber had received a little more than $400,000 from the city tax base over 14 months (1991 and the first two months of 1992). The chamber had actually received less than half that amount, $164,581.73, and had plans to return even more unused monies to the city.

Coody made it sound as though it was illegal or under-the-table money when, in fact, it was money from the city's economic development fund and from the Advertising and Promotion Commission.

It's money designated for the chamber for economic development and for promoting the city.

When the chamber called Coody's hand on his accusations, he reverted to his same old song and dance about being denied access to information by city employees.

That's getting to be an old song and dance.

Ploy challenged

One of Coody's latest ploys concerns the proposed Northwest Arkansas Regional Airport Authority.

Again, on programs on public access television, Coody keeps alluding to information he has about hidden costs and hidden agendas.

He has not made a secret of the fact that he is opposed to the regional airport.

That is his choice, but if any of this information he has is real, I suggest he call a press conference and make copies of such information available to the media and to the public.

It's easy for Coody to say he knows all sorts of things, but it seems every time his hand is called, he has to back down.

I think it's time for Coody to back down, period. I believe his rhetoric about loyalties for Fayetteville is a thin facade covering his real loyalty—to himself.

Dave Stokes
Publisher

APPENDIX B

(R. 52)

[December 3, 1992]

Times Publisher Defends Probe Into Past Of Mayoral Candidate

By RUSTY GARRETT

Times Staff Writer

Northwest Arkansas Times publisher David Stokes confirmed Monday the newspaper had "taken a leading role" recently in researching the life and activities of Fayetteville mayoral candidate Dan Coody prior to his arrival in Fayetteville in 1986.

Stokes said the role had included the employment of a local private investigator who reportedly had a Texas investigator check into Coody's background in Beaumont, Texas.

However, Stokes said Monday he had uncovered some major discrepancies between information contained in the report and that he subsequently received from former Beaumont residents who say they knew Coody in high school. Stokes said he also had heard the Texas investigator had not conducted himself professionally and had misrepresented himself to persons contacted in the investigation.

Stokes defended the investigation, initiated last Thursday, as necessary to answer questions of Coody's past, which he said the candidate has continually refused to answer throughout the campaign. He said it is necessary for newspapers "from time to time" to undertake such activity.

Stokes said the decision was also based in part on attacks Coody made against the *Times* in a television debate on Access 4 Fayetteville last week. He said he

suspected Coody's dislike of the *Times* stemmed from the paper's refusal to "become his voice."

"We're not the voice for any one person," Stokes continued. "We have the entire community to look after."

Stokes said the investigation was undertaken "to get the real truth" concerning the candidate. "We owe it to the community regardless of what we find."

Stokes took issue with a characterization by Coody earlier Monday of the probe as an attempt to "get the dirt" on the candidate.

At an afternoon news conference directly across the street from the *Times* building, Coody asked that the details of the report be made public. "Prompt and full release of this information will refute the various fantastic rumors that have been intentionally circulated in an attempt to cloud my personal history and attack my character," Coody said.

Coody also reported that as a result of the probe, "my elderly parents, my totally disabled brother, my wife and I have been unnecessarily harassed, maligned and sickened by these inexcusable tactics."

Stokes said similar investigations of the four other mayoral candidates were not undertaken by the newspaper, because they had not been the subject of rumors with the "severity" of those circulated about Coody.

He said he had received "a lot of support" for an editorial in Saturday's newspaper demanding Coody reveal the details of his past.

Stokes said the investigation revealed Coody's early life was "very admirable." It showed he had created and operated a successful plant nursery business, that he had helped run radio stations in Huntsville and Livingstone, Texas, that he was a member of a school choral group and that he started his own band. "I don't understand

why he hasn't used this information in his campaign," Stokes said.

He also said the probe had failed to turn up any information on Coody's life between the mid-1970s and 1986, when he moved to Fayetteville. Stokes said the report had created more questions than it had answered.

Stokes said Coody "can make anything out of the investigation he wants to." He said Coody has had "plenty of opportunities" to bring up the details of his past, and has refused. Instead, Stokes said, he "went around it, or halfway answered it. He never outlined his past year by year."

Stokes acknowledged Coody had pledged to "work side by side" with the newspaper and the community and said he hoped the *Times* and Coody "could work together as a good team. We have a lot of common interests," he said. But he said Coody "has yet to show me he truly means what he says."